

United States District Court, Northern District of Illinois

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| Name of Assigned Judge or Magistrate Judge | Joan H. Lefkow | Sitting Judge if Other than Assigned Judge | |
| CASE NUMBER | 10 C 7372 | DATE | 3/24/2011 |
| CASE TITLE | First Step Child Care Center, Inc. vs. KASI Designs, Inc. | | |

DOCKET ENTRY TEXT

First Step's motion to remand [6] is granted. This case is remanded to the Circuit Court of Cook County forthwith. This case is terminated.

■ [For further details see text below.]

Docketing to mail notices.

STATEMENT

On May 13, 2009, First Step Child Care Center, Inc. ("First Step") filed a four count complaint against defendant KASI Designs, Inc. ("KASI") in the Circuit Court of Cook County. The complaint alleges claims under Illinois law for breach of contract, fraud, and violation of the Illinois Mechanics' Lien Act that arise from KASI's alleged failure to provide adequate construction blueprints to build a commercial building for First Step. The parties do not dispute that the claims alleged in First Step's complaint fail to provide grounds for removal to this court.

On November 16, 2010, KASI filed a notice of removal in which it asserts that this court has jurisdiction because "KASI will file counterclaims to the state action based on federal question on or before November 30, 2010." KASI offers little explanation of the nature or basis for its "federal question" claims, other than to state vaguely that the claims relate to a copyright registration that KASI received for the drawings it created as part of its work for First Step. KASI has not submitted any evidence to prove that it filed a counterclaim against First Step alleging copyright infringement. First Step, for its part, asserts that KASI has not filed a counterclaim in the state court proceedings. A search of this district's electronic docketing system shows that KASI filed a complaint for copyright infringement against First Step in October 2007 and that the complaint was dismissed on November 8, 2007. *See* Case No. 07-cv-5529. The court is aware of no other cases in this district where KASI is named as a plaintiff or defendant.

Even if KASI has filed a counterclaim alleging copyright infringement, removal is not justified. 28 U.S.C. § 1441(a) provides that an action can be removed from state court to federal court only where a federal court would have "original jurisdiction." Under the "well-pleaded" complaint rule, a counterclaim cannot establish original jurisdiction. *See Holmes v. Group, Inc. v. Vornado Air Circulation*, 535 U.S. 826, 831–32, 122 S. Ct. 1889, 153 L. Ed. 2d 13 (2002) (rejecting the notion that a defendant can "remove a case brought in state court under state law, thereby defeating a plaintiff's choice of forum, simply by raising a

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federal counterclaim”); *see also Krueger v. TradeGuider Sys., LLC*, No. 07 C 6261, 2007 WL 4219194, at * 1 n.1 (N.D. Ill. Nov. 27, 2007). KASI, therefore, cannot establish jurisdiction solely on the basis of its purported counterclaim against First Step. This case must be remanded to the Circuit Court of Cook County forthwith.